

The Country Justice :
CONTAINING THE
P R A C T I C E
OF THE
Justices of the Peace
OUT OF THEIR
S E S S I O N S.
G A T H E R E D

For the better help of Such JUSTICES of Peace,
as have not been much conversant in the Study of the
L A W S of This R E A L M.

By MICHAEL DALTON of Lincolns-Inn, Esq;
And One of the Masters in Chancery.

To which is now added,
The Duty and Power of JUSTICES of PEACE in Their
S E S S I O N S;
An Abridgment (under proper Titles) of all S T A T U T E S,
relating thereunto;
A Large T A B L E of the Principal Matters herein contained;
W I T H
Two other TABLES, One of the C H A P T E R S in this Book;
And the Other of such A C T S of Parliament, as concern the Office of a
J U S T I C E O F P E A C E.

Justice is the Staff of Peace, and the Maintenance of Honour. Cic.

L O N D O N,
Printed by William Rawlins and Samuel Roycroft, Assigns of Richard and
Edward Atkyns, Esquires; and are to be Sold by Samuel Keble, at the
Turks-Head near St. Dunstons Church in Fleetstreet. M D C X C.

To the Right Honourable,

ST. HENRY MOUNTAGUE, K^t.

**Lord Chief Justice of the Pleas, holden before
the KINGS MAJESTY.**

My Honourable good Lord.

After I had spent many Years in the Study of the Laws of this Realm, and was called to the Ministration of *Justice* in my Country, I thought it not sufficient to apply my self only to the Precepts and Directions of former Times, but withal to observe such new Accidents as daily happened within my own Experience, whereby the better to perform the Duties of my Place. Whilst I thus endeavoured my self, I observed that *Justices* of Peace in their Places grew in neglect, and many times were over-swayed by Superiour Solicitations, yea, and sometimes disgraced, in such sort, as I could have been content rather to have sat down in private quiet, than with Care, Study and Pains to incur such Hazards and Discontentments. But again, whilst I stood thus doubtful, it pleased the Fountain of Justice (I mean, His *Royal Majesty*) so to Countenance and Grace, yea, to shew His Majesties high Esteem of his Authority of *Justices* of Peace, not only (in his Majesties late Speech in the *Star-Chamber*,) prizing and valuing them with the nearest imployed about him, but (to the great Honour of this Realm, and of the Government thereof) sithence also establishing this Country Government by *Justices* of Peace in His Majesties Native Country of *Scotland*; so as methought I saw the current of Justice to run clear and comfortably through the Land, and my self to receive new Vigour and Encouragement: whereupon I began to recollect my confused Notes and Observations, willing, for my private help and better readiness, to digest them into some Order and Method, such as my Understanding could best contrive. Thus prepared, I yet made question with my self, whether it were better to adventure the publishing of these my Labours, or to keep them by me only for my own private Use. In this unsettled Consultation, being brought unto your Lordship by my good Friend, (who also discovered to your Lordship this my Labour) and finding

The Epistle Dedicatory.

your Lordship favourably to Respect me and it, I took heart and encouragement to put the same in Print, after that I had obtained (according to my humble Suit) your Lordships favour for allowance and Patronage thereof,

Now it remaineth farther, to crave of your Lordship, not only for my self, but for all that shall uprightly labour in this Justiciary course, that we may receive from your Lordship such Incouragement and Countenance, as that we may Courageously and Constantly undergo the charge imposed upon Us, without fear of Oppositions, or other uncomfortable Disturbances. So by your Lordships favour and means shall Justice be the more duly Administred, and His Majesties Peace be the more firmly maintained, to the Honour and Safety of the Kings Majesty, and the good and peaceable Government of all his Subjects. And so His Majesty will no doubt proceed (as he hath begun) yet still to increase your Honour, for your care in honouring Him, and his Royal Throne thereby; and the People, who shall feel the goodness and benefit of your zeal of Justice, will heartily and joyfully pray for your Happiness; and God, beholding how you make Justice and Peace to go together, will, according to His abundant Mercies and infallible Truth, give you the everlasting reward of Justice and Peace: For all which I will continually pray, and besides, rest

Your Lordships in all Humility

and Duty ever to be commanded,

MICHAEL DALTON

Every Justice of Peace (in his own discretion, and *ex officio*) may bind all such to the Peace as in his presence shall strike another, or shall threaten to hurt another, or shall contend only in hot words. *Vide tit. Sureties for the Peace.*

P. Inst. 173.
10 H. 7. 20.
Crompt.
154.

If any person be dangerously hurt in any Affray (or otherwise,) every Justice of Peace, within the year and day after such hurt, may commit to the Gaol such Offender, there to remain until the day and year be expired, or that the said Offenders shall find Sureties to appear at the next General Gaol delivery, to answer to the Felony, if the party hurt, happen to die within a year after the hurt. *Vide Stat. 3 H. 7. c. 1. And by Gods Law Exodus 21. 18, 19. If the party happen to recover, the Offender shall pay to the party hurt for losing his time, and also for his healing.*

§. 7.
Dangerous
hurt.

But where the hurt shall be dangerous, or wound mortal, although the Justice may bail the offender, living the party so hurt; yet it shall be better discretion for the Justice to commit the Offender to the Gaol, there to remain, until there shall appear some good hope of recovery in the other: And so Sir Nicholas Hyde advised at Cam. Lent Assizes, An. 5 Car. Regis.

And by the Stat. de officio Coronatoris 3 or 4 E. 1. upon Appeal of Wounds, and such like, especially if the Wounds be mortal, the parties appealed shall be taken immediately, and kept till it be known perfectly whether the party hurt shall recover or not; and if he die, the Offender shall be kept; and if he recover, he shall be attached by four or six Pledges, as the Wound is great or small: and if it be for a Maim, the Offender shall find no less than four Pledges; if it be for a small wound or maim, two Pledges shall suffice.

5 H. 7. 6.
Br. Faux.
imp. 41.

If an Affray or Assault shall be made upon a Justice of Peace or a Constable, they may not only defend themselves, but may also apprehend and commit the Offenders, until they have found Sureties for the Peace: the Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaol: and the Constable must commit them to the Stocks for the present, and after carry them before a Justice of Peace, or to the Gaol. *Vide hic postea.*

C H A P. IX.

Armour.

2 E. 3. c. 3.
P. 1.
7 R. 2. 13.
20 R. 2. c. 1.

IF any person shall ride or go armed offensively before the Kings Justices, or any other the Kings Officers or Ministers doing their Office, or in Fairs, Markets, or elsewhere, (by night or by day) in Affray of the Kings people, (Sheriff, and other the Kings Officers) and every Justice of Peace (upon his own view, or upon complaint thereof) may cause them to be staid and arrested, and may bind all such to the Peace or Good behaviour, (or, for want of Sureties may commit them to the Gaol:) and the said Justice of Peace (as also every Constable) may seize and take away their Armour and other Weapons, and shall cause them to be appraised, and answered to the King as forfeited. And this the Justice of Peace may do by the first *Assignavimus* in the Commission. See hereof *antea*.

§. 1.

One Justice

Lam. Offic.
of a Const.
13.

So of such as shall carry any Guns, Daggs, or Pistols that be charged, or that shall go apparelled with privy Coats or Doublets, the Justice may cause them to find Sureties for the Peace, and may take away such Weapons, &c. *Vide tit. Surety for the Peace.*

2 E. 3. c. 3.
Co. 5. 72.
20 R. 2. 1.

And yet the King's Servants in his presence, and Sheriffs, and their Officers, and other the Kings Ministers, and such as be in their company assisting them in executing the Kings Process, or otherwise in executing of

§. 2.

E

their

their Office, and all others in pursuing Hue and Cry, where any Felony or other Offences against the Peace be done, may lawfully bear Armour or Weapons.

Also it seemeth that any Justice of Peace may command that Weapons be taken from such Prisoners as at any time shall be brought before him. 12 R. 2. 24

Also if any Servant to Husbandry, or to any Artificer, or Victualler, or any Labourer, shall bear any Buckler, Sword or Dagger, except they be travelling with their Master, or in their Masters message) it seemeth every Justice of Peace may imprison them till they have found Sureties for the Peace, and may seize and take away their said Weapons, (or may cause the Constable to seize the same as forfeit) and present the said Weapons at the next Sessions of the Peace. But this Statute seemeth now to be repealed by the Statute made 21 Jac. 28.

And yet, by the first Assignavimus in the Commission, the Justice of Peace may do it, especially if he suspect any breach of the Peace to be intended by them. 12 R. 2. 6. P. 2.

C H A P. X.

Barrator.

§. 1. **B**arrator cometh from the French Barrat, id est, astutia, and in that Tongue betokeneth a Deceiver. In our Law a Barrator is a common Wrangler that setteth men at odds, and is himself never quiet, but at Brail with one or other. Dr. Cow. & Minsh.

Every Justice of Peace (upon his discretion) may bind to the Peace or Good Behaviour, such as are common Barrators. 9 E. 4. 5. Lamb. 79. Co. 8. 36.

Also a common Barrator is he who is either a common Mover and Stirrer up (or Maintainer) of Suits in Law in any Court, or else of Quarrels or parties in the Country. 9 E. 4. 3. 24. Co. L. 368.

§. 2.
In Courts.

As if in any Court of Record, County-Court, Hundred, or other inferior Courts, any person by fraud or malice under colour of Law, shall themselves maintain (or stir up others unto) multiplicity of unjust and feigned Suits or Informations (upon penal Laws,) or shall maliciously purchase a special *Supplicavit* of the Peace, to force the other party to yield him Composition; all such are Barrators.

In the Country; and these are of three sorts.

§. 3.
In the
Country.

1. Disturbers of the Peace, viz. such as are either common Quarrellers or Fighters in their own cause; or common Movers or Maintainers of Quarrels and Affrays between others.

2. Common Takers or Detainers (by force or subtilty) of the possessions of houses, lands or goods, which have been in question or controversies.

3. Inventers and Sowers of false Reports, whereby discord ariseth, or may arise between Neighbours. All these are Barrators. Co. 8. 36.

Ita, if one be Communis Seminator litium, he is a Barrator. West In dict. 75. 76.

Or if any man of himself be Communis oppressor vicinorum, (a common Oppressor of, or Wrangler with, his neighbour or others) either by unjust or wrangling Suits, or other oppressions or deceits, he is a Barrator.

Or if one be Communis Pacis perturbator, Calumniator, & Malefactor, he is a Barrator. Crom. 257.

§. 4.

But all such persons must be common Barrators, sc. not in one or two, Co. 8. 37. but in many causes.

A Feme covert cannot be indicted of common Barretry, and an Indictment against one for that offence was quashd. T. 16 Jac. Rolls, Rep. part 2. p. 39.

I. A

The Form of the Oath concerning the Office of a Constable.

YOU shall Swear, that you shall well and truly serve our Sovereign Lord the King in the Office of a Constable. You shall see and cause his Majesties Peace to be well and duly kept and preserved, according to your power. You shall arrest all such persons as in your sight and presence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or other Breach of his Majesties Peace. You shall do your best endeavour (upon Complaint to you made) to apprehend all Felons, Barreters and Rioters, or persons riotously assembled: and if any such Offenders shall make resistance (with force) you shall levy Hue and Cry, and shall pursue them until they be taken. You shall do your best endeavour that the Watch in and about your Town be duly kept for the apprehending of Rogues, Vagabonds, Night Walkers, Eves Droppers, and other suspected persons, and of such as go armed, and the like: and that Hue and Cries be duly raised and pursued, according to the Statute of *Winchester*, against Murtherers, Thieves, and other Felons: and that the Statutes made for the punishment of Rogue and Vagabonds, and such other idle persons, coming within your Bounds and Limits, be duly put in execution. You shall have a watchful Eye to such persons as shall maintain or keep any common house or place where any unlawful Game is or shall be used: as also to such as shall frequent or use such places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Assizes, Sessions of the Peace, or Leet, you shall present all and every the Offences done contrary to the Statutes made (1 Jac. 4 Jac. and 21 Jac. Reg.) to restrain the inordinate haunting and tipling in Inns, Alehouses, and other Victualling Houses, and for repressing of Drunkenness. You shall there likewise true Presentment make of all Blood-sheddings, Affrays, Out-cries, Rescous, and other Offences committed or done against the Kings Majesties Peace within your Limits. You shall once every year during your Office present at the Quarter Sessions all Popish Recusants within your Parish, and their Children above 9, and their Servants, (sc. their monthly absence from the Church) 3 Jac. 4. And you shall have a care for the maintenance of Archery according to the Statute. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of peace of this County, or higher Officers. You shall be aiding to your Neighbours against unlawful Purveyances. In the time of Hay or Corn Harvest (upon request) you shall cause all persons meet to serve by the day for the Mowing, Reaping, or getting in of Corn or Hay. You shall in *Easter* Week cause your Parishioners to chuse Surveyors for the mending of the High-Ways in your Parish. You shall have a care that the Malt made or put to sale in your Town, be well and sufficiently made, trodden, formed and dressed. And you shall well and duly according to your knowledge, power and ability, do and execute all other things belonging to the Office of a Constable, so long as you shall continue in this Office. *So help you God.*

This Oath I have set down the more largely, whereby to shew the principal matters whereof the Constables are chiefly to have care.